



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

GERALD C. MANN
~~NOTED FOR DISCUSSION~~
ATTORNEY GENERAL

Honorable Thomas A. Wheat
County Attorney
Liberty County
Liberty, Texas

Dear Sir:

Opinion No. 0-2479

Re: Authority of Liberty County Commissioners' Court to widen pavement of County road through the unincorporated town of Daisetta.

We are in receipt of your letter of June 24, 1940, wherein you request the opinion of this department upon the question hereinafter stated. Thank you for the authorities submitted with your request.

Your question may be stated substantially as follows:

Does the Commissioners' Court of Liberty County have the power and authority to use the unexpended portion of the road bond funds allocated to the paving of the Raywood-Daisetta county road for the purpose of paving the space between the 18 foot slab and the curb along such road in certain portions of the unincorporated town of Daisetta?

The funds for the paving were provided by a bond issue voted last October or thereabout, "for the purpose of construction, maintenance and operating macadamized, graveled or paved roads and turnpikes or in aid thereof" and the Raywood-Daisetta road was among those named in the bond issue, the petition and in the orders and notices of the Commissioners' Court. After the bonds were voted, \$185, 117.00 was allocated to the paving of this road, but only about \$165,000.00 was used, leaving a balance of approximately \$20,000.00, which the Commissioners' Court wishes to expend as stated in your inquiry.

Section 52 of Article III of the State Constitution provides, in part, as follows:

"....under legislative provision any county.....may issue bonds.....for the following purposes:

".....

"(c) The construction, maintenance, and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof."

Article 752a (Vernon's Ann. Statutes) provides the statutory authority required by the constitution, using almost the identical language.

The county commissioners' court is the governing body of the county and its control extends over the streets and roads of unincorporated cities or towns within the county and over incorporated cities and towns which have no de facto municipal government. *Feris v. Bassett, et al* (Civ. App., Galveston, 1920) 227 S.W. 233; Article 6730 (R.C.S., 1925.) With the consent of the governing body of an incorporated town or city, it may improve streets therein which are integral parts of the county road system. *City of Breckenridge v. Stephens County*, 120 Tex. 318, 40 S.W. (2d) 43.

It has often been pointed out by our courts that, where jurisdiction or control over a subject is conferred upon the county commissioners' court, the special power or jurisdiction confided to that court must be exercised according to its discretion. *Haverbekken v. Coryell County*, (Com. App., Sec. A., 1923) 112 Tex. 422, 247 S.W. 1086; *Holt & Co. v. Wheeler County*, (Civ. App., Amarillo, 1921) 235 S.W. 226.

The Legislature in its wisdom has seen fit to place no limits upon the width of pavement on county roads nor upon the extent of the improvements on such roads. There are no constitutional or statutory provisions in Texas requiring the pavement on such roads to be of uniform width.

It is, therefore, the opinion of this department that the Commissioners' Court of Liberty County has, within its sound discretion, the power and authority to make the improvements contemplated, and you are respectfully advised that your question is answered in the affirmative.

We have assumed that there is no specification as to width of the Raywood-Daisetta road in the record of the bond issue by which the funds were provided.

APPROVED JUL 8, 1940
s/Glenn R. Lewis, (Acting)
Attorney General of Texas

Yours very truly
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee by
s/BWB Chairman

By s/Peter Maniscalco
Assistant